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Human rights situations that require the Council's attention

Written statement* submitted by the Jammu and Kashmir Council for Human Rights (JKCHR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Statement by Jammu and Kashmir Council for Human Rights (JKCHR)

UN Security Council in its Resolution 307 (1971) of 21 December 1971 in para 1 prescribed "that a durable cease-fire and cessation of all hostilities in all areas of conflict be strictly observed and remain in effect until withdrawals take place, as soon as practicable, of all armed forces to their respective territories and to positions which fully respect the cease fire line in Jammu and Kashmir supervised by the United Nations Military Observer Group in India and Pakistan". In para 7 of the Resolution Security Council "Decides to remain seized of the matter and to keep it under active consideration". Government of Pakistan a party to the Kashmir dispute on 07 January 2016 notified the President of the Security Council that "it (Pakistan) would like to see the following items retained on the list of matters of which the Security Council is seized: (a) The India-Pakistan question; (b) The Hyderabad question; (c) The situation in the India/Pakistan subcontinent." Security Council has circulated the notification as document S/2016/21 dated 08 January 2016.

On Monday 22 February 2016 India and Pakistan reviewed the bilateral relations between the two countries during a meeting between Foreign Secretary, S Jaishankar and Pakistani High Commissioner, Abdul Basit. During his meeting with Indian Foreign Secretary Jaishankar, the Pakistan High Commissioner, Abdul Basit raised the issues of human rights violations in Jammu Kashmir, continuous detention and house arrests of Hurriyat leaders, and restrictions imposed on their travel abroad.

Pakistan High Commissioner underscored the need to resolve Kashmir issue in accordance with the United Nations resolutions on Kashmir and as per the wishes and aspirations of the people of Jammu Kashmir. They also discussed about initiation of a comprehensive dialogue, which among other issues, would include Kashmir issue.

It is important to point out that Government of India has expressed a desire at the two hundred and twenty-seventh meeting (227th meeting) of UN Security Council on 15 January 1948 and stated, "..we would like to exhaust every possible resource for avoiding war, particularly war with the people of a neighbouring State with whom centuries of common living, culture and tradition incline us, in spite of ephemeral recent happenings, to continue to develop the ties that bind us together." In 2016 the nuclear status of the two countries and the unease of the people in the pending disputes, makes it compulsory that war is avoided at all costs.

As a start India has to accept that the State of Jammu and Kashmir is currently distributed on either side of cease fire line. India and Pakistan have accepted commitments to carry out the duties outsourced to them by the UN and as required under pledges made to the people since August 1947, when the Government of Kashmir addressed a Stand Still Agreement to India and Pakistan. Government of India has made a serious error of judgment by violating the terms of admission and in not honouring the UN restraints placed on its soldier in Kashmir. Its soldier has earned the notoriety of engaging himself in a war with the people of Jammu and Kashmir (Valley in particular) and he has been slated at the UN and various other forums as a violator of human rights. These forces face serious charges of gang rape that took place in Konan-Poshpora. Delhi has to face the accrued criminal and civil liability in Kashmir.

Situation in Jammu and Kashmir and respect for human rights would have been different if the people here were allowed to establish a government as provided by the United Nations. United Nations Security Council at its 285th meeting on 19 April 1948 identified the composition and character of the Jammu and Kashmir Government. Security Council required that "The Government of the State shall forthwith be reconstituted so as to give equal representation to each major political group in the State, viz, the National Conference, the Muslim Conference and the Azad Kashmir – which will each be invited to designate an equal number of responsible representatives to constitute a Council of Ministers. This Council of Ministers may choose one of its members to act as President, but in the allocation of the portfolios it will be guided by the advice of the Commission".

Nothing of the sort has taken place during the last 68 years (1948-2016) since this requirement was put down by the Security Council. Government of India has failed to assist the people under its administration to set up a UN identified Government, allow a sovereignty of powers to the State Government and respect the sovereignty of the vote of the common people. The question of the sovereignty of the people, today has to take on board a further distribution of people under three administrations on either side of cease fire line and a vocal Kashmiri diaspora spread all over the world.

A low intensity regular war is going on between the Indian security forces and the people of Jammu and Kashmir. The Kashmir situation begs attention of the Human Rights Council and UN. Indian soldier has no reason to violate its discipline and violate all bilateral and international restraints. These Indian forces have been allowed into the disputed State in October 1947 on a provisional basis as a supplement to the State forces to defend the territory, protect life, property and honour of the people. United Nations Security Council in its Resolution of 21 April 1948 has placed three restraints on these security forces, namely, (1) That the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State (restraint on behaviour), (2) That as small a number as possible should be retained in forward areas (restraint on number) and (3) That any reserve of troops which may be included in the total strength should be located within their present base area ((restraint on location).

The Government of Jammu and Kashmir (elected from only a part of the territory) is currently run by New Delhi. PDP (Peoples Democratic Party) is responsible for allowing Delhi to rule the State directly through its representative, the Governor. PDP has acted as a conduit and for helping the BJP to find a foothold in the Government of Indian administered part of Jammu and Kashmir for the first time in the history of Kashmir. It is a violation of UN stipulation in respect of local Government.

PDP helped Delhi to engineer a communal and regional polarisation between Srinagar and Jammu during elections. UN Human Rights Council has to take urgent notice of the Jammu and Kashmir police's decision to enhance the reward money for killing alleged 'militants' that is Muslim youth in Kashmir. The reward money is paid by the police for killing militants fighting Indian rule in the state.

It is worrying that the Jammu and State on the Indian side of cease-fire-line has been turned into a police State. After killing a generation from 1990-2016, police have categorised Kashmiri Muslim youth as A++, A+, A, B and C categories militants, which is a ruse to choke any dissent. The decision to raise the reward money for killing A++ category militant from Indian Rupees 10 lakh to Rupees 12.5 lakh; for A+ category from Rupees 5 lakh to Rupees 7.50 lakh, for category A militants, from Rupees 3 lakh to Rupees 5 lakh, for category B militants from Rupees 2 lakh to Rupees 3 lakh and for the C-category, the increase of reward money from Rupees 1 lakh to Rupees 2 lakh is a licence to kill and the inducement would encourage police, security forces and other rogue elements to frame and kill innocent citizens.

Indian soldier and her agencies in Jammu and Kashmir are under restraints stipulated at the time of admission in October 1947 and there are other international restraints on their number, behaviour and location under UN Resolution of 21 April 1948. Any death in Kashmir by an Indian soldier, agencies and the police, attracts international attention as a war crime.

The behaviour, number and location of Indian soldier in Jammu and Kashmir does not remain in compliance of the bilateral and international restraints in a disputed territory subject of a free vote under UN supervision. It has gradually graduated and continues to do so as force with military engagement with the common people of Kashmir in the Valley and in particular the Muslim youth of Kashmir. The decision of CRPF (Central Reserve Police Force) operating in Kashmir, to shift its heavy armoured mine protected vehicles (MPVs) to Kashmir valley for use by its troops deployed here is alarming. It is as if security forces have decided to decimate any support for self-determination. The active dissent by the local people is tagged as 'insurgency' by the security forces. A full-fledged war machinery is being moved to fight the people of Kashmir (Jammu and Kashmir) who have a pending right of self-determination at the UN. It is a situations that requires the Council's attention